FILE COPY

Office Supreme Court, U.S.
FILED
SEP 18 1960
JAMES R. BROWNING, Clerk

No. 316

IN THE SUPREME COURT OF THE UNITED STATES

GUY T. KELLEY, IRENE R. KELLEY, LOUIS TERRANA, ROBERT H. BOYD, FRANK B. MONROE, NAN SMITH, THELMA STRAIGHT, AGNES THOMAS, HOMER CHARLES AND MELVIN TUFFO,

Appellants,

v.

WILLIAM RAGGIO, C. W. (BUD) YOUNG, TED BERRUM, AND ROBERT GALLI,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEVADA

BRIEF ON BEHALF OF DEFENDANTS-APPELLEES

CLIFTON YOUNG
LESLIE B. GRAY

Attorneys for Appellants.

Address: 15 East First Street, Reno, Nevada

ROGER D. FOLEY, *Attorney General*
JOHN A. PORTER, *Deputy Attorney General*
NORMAN H. SAMUELSON, *Deputy Attorney General*
Supreme Court Building, Carson City, Nevada
WILLIAM J. RAGGIO, *District Attorney*
Courthouse, Reno, Nevada

Attorneys for Appellees.

IN THE SUPREME COURT OF THE UNITED STATES

No. .....

GUY T. KELLEY, IRENE R. KELLEY, LOUIS TERRANA, ROBERT H. BOYD, FRANK B. MONROE, NAN SMITH, THELMA STRAIGHT, AGNES THOMAS, HOMER CHARLES AND MELVIN TUFFO,

Appellants,

v.

WILLIAM RAGGIO, C. W. (BUD) YOUNG, TED BERRUM, AND ROBERT GALLI,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEVADA

BRIEF ON BEHALF OF DEFENDANTS-APPELLEES

CLIFTON YOUNG
LESLIE B. GRAY
Attorneys for Appellants.
Address: 15 East First Street, Reno, Nevada

ROGER D. FOLEY, *Attorney General*
JOHN A. PORTER, *Deputy Attorney General*
NORMAN H. SAMUELSON, *Deputy Attorney General*
Supreme Court Building, Carson City, Nevada
WILLIAM J. RAGGIO, *District Attorney*
Courthouse, Reno, Nevada
Attorneys for Appellees.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. .....

GUY T. KELLEY, IRENE R. KELLEY, LOUIS TERRANA, ROBERT H. BOYD, FRANK B. MONROE, NAN SMITH, THELMA STRAIGHT, AGNES THOMAS, HOMER CHARLES AND MELVIN TUFFO,

Appellants,

v.

WILLIAM RAGGIO, C. W. (BUD) YOUNG, TED BERRUM, AND ROBERT GALLI,

Appellees.

MOTION TO AFFIRM, PURSUANT TO SUPREME COURT RULE 7

COME NOW the appellees herein and move the Court to affirm the judgment of the Supreme Court of the State of Nevada from which the appeal in the above-entitled cause purports to have been taken, on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

Dated September 12, 1960.

ROGER D. FOLEY
Attorney General

JOHN A. PORTER
Deputy Attorney General

NORMAN H. SAMUELSON
Deputy Attorney General
Counsel for Defendants-Appellees

Supreme Court Building
Carson City, Nevada

INDEX AND TABLE OF CITATIONS

The Problem Described 7–9

The Statutory Remedy 9–10

Appellants' Argument 10–11

Appellees' Contentions

A. The Nevada Statute Constitutes a Valid Exercise of the State's Police Power and Is Not Violative of Any Federal Guarantee 11–15

B. (1) The Nevada Statute Is Restrictive and Regulatory: It Involves No Absolute Denial of Property Rights: And It Is Not Violative of Any Constitutional Guarantee.

(2) The Evidence Submitted Below By Appellants Was Not Sufficient to Rebut the Presumption of Constitutional Validity of the Nevada Statute 16–17

C. The Weight of Authority Relative to Restrictive Regulations of Gasoline Price Advertisements Are Not Applicable Nor Controlling of the Question Herein 17–18

Conclusion 19

CASES CITED

Adams v. Miami Beach Hotel Association, Fla.
77 So.2d 465 ..... 10, 14

Booth v. Illinois
184 U.S. 425, 429, 46 L.Ed. 623 13

Breard v. Alexandria
341 U.S. 622, 632, 95 L.Ed. 1233, 1242, 71 S.Ct. 920, 35 A.L.R.2d 335, at pages 344–345 ..... 12, 15

City of Sarasota v. Sunad, Inc., Fla.
114 So.2d 377 10

Clark v. Paul Gray
306 U.S. 583, 594, 59 S.Ct. 744, 83 L.Ed. 1001, 1010 ..... 12, 14

Euclid v. Ambler Realty Co.
272 U.S. 365, 387, 71 L.Ed. 303 13

Hebe Co. v. Shaw
248 U.S. 297, 303, 63 L.Ed. 255 13

Hirsch v. City and County of San Francisco
143 Cal.App.2d 313, 300 P.2d 177, 181–182, 183–184 15

Lawton v. Steele
152 U.S. 133, 136–137, 39 L.Ed. 385, 388 13

Lindsley v. Natural Carbonic Gas Co.
220 U.S. 61, 80, 81 15

Nebbia v. New York
291 U.S. 502, 523, 525, 78 L.Ed. 940, 948, 950, 54 S.Ct. 505, 89 A.L.R. 956, 1469 ..... 9, 12, 13

Patsone v. Pennsylvania
232 U.S. 138, 34 S.Ct. 281, 58 L.Ed. 539 ..... 11, 13, 15

Purity Extract & T. Co. v. Lynch
226 U.S. 192, 201–202, 57 L.Ed. 184, 189 ..... 13, 14

Rast v. Van Deman & Lewis Co.
240 U.S. 342, 357, 36 S.Ct. 370, 60 L.Ed. 679, 687 ..... 12, 13

Cases Cited—Continued

Semler v. Oregon State Bd. of Dental Examiners
148 Ore. 50, 34 P.2d 311, aff'd 294 U.S. 608, 611–613, 55 S.Ct. 570, 79 L.Ed. 1086 ..... 13, 14

Serve Yourself Gasoline Stations Ass'n. v. Brock
39 Cal.2d 813, 249 P.2d 545, 550, 345 U.S. 980, 97 L.Ed. 1394 11

U. S. v. Carolene Products Co.
304 U.S. 144, 152, 58 S.Ct. 778, 82 L.Ed. 1234, 1241 ..... 12, 13

Valentine v. Chrestensen
316 U.S. 52, 54, 62 S.Ct. 920, 86 L.Ed. 1262, 1265 ..... 12, 15

Viale, et al. v. Foley, et al., No. 4235, Nev. Supreme Court March 31, 1960 15

STATUTES CITED

Chapter 415, 1959 Statutes of Nevada 9
NRS 651.040 17

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No.

GUY T. KELLEY, IRENE R. KELLEY, LOUIS TERRANA, ROBERT H. BOYD, FRANK B. MONROE, NAN SMITH, THELMA STRAIGHT, AGNES THOMAS, HOMER CHARLES AND MELVIN TUFFO,

Appellants,

v.

WILLIAM RAGGIO, C. W. (BUD) YOUNG, TED BERRUM, AND ROBERT GALLI,

Appellees.

BRIEF ON BEHALF OF DEFENDANTS-APPELLEES

THE PROBLEM DESCRIBED

The economy of Nevada is very substantially dependent upon tourism, accounting for the existence of a considerable number of hotels, motels, inns and motor courts for the accommodation of the traveling public. Competition for patronage among those engaged in such business is intense and sharp.

Experience has shown both unfair and fraudulent practices on the part of many operators in said business, consisting of resort to and employment of "bait-advertising," designed to divert and attract tourist patronage to themselves. In order to combat such unfair business practices in their own economic interest, other operators (who would otherwise have refrained therefrom) have been drawn into like unethical practices, resulting in a generally-prevalent condition. The result was that the hotel and motel industry, of fundamental economic importance to the State of Nevada, has been seriously disrupted financially, and has been

criticized and generally held in disrepute by dissatisfied tourists who have been victimized by the unfair and "gouging" practices of many operators in said industry.

The unfair practices principally involved have been misleading, deceptive and fraudulent outdoor sign advertisements respecting the availability of, and prices charged for, accommodations, and (during peak periods in tourist seasons, or holiday weekends) the requirement that patrons rent and pay for accommodations desired for a specified number of days, even though they do not require and do not intend to use said accommodations for the prescribed period of time.

Efforts on the part of the industry itself to eliminate such unfair practices had substantially failed, as had also the partial measures of various county and municipal authorities to "police" the situation. The substantial interest and welfare of both the traveling public, and the communities economically dependent upon such establishments, must be deemed to be essentially involved and concerned in any such unfair practices, justifying their proper regulation and control.

"Bait-advertising" inevitably and generally depresses rates in the industry under consideration during weekdays and in "off" seasons of tourism to an uneconomic minimum, thus compelling compensating "gouging" high rates for the same accommodations on weekends, holidays, and peak periods of the tourist season.

In actual practice and experience, "bait-advertising" even forces otherwise ethical operators in the industry to "fall in line," and to engage in the same unfair practices in economic self-defense. For it is essential to the successful operation and conduct of the business (when "bait-advertising" is prevalent), that prospective patrons be attracted to an establishment, so that an operator shall have an opportunity "to sell" the accommodations he has to offer to the public. Instead of attracting potential patrons on the basis of merit, "bait-advertising" is the "gimmick" employed. Once a person is induced to enter the establishment

he virtually becomes a "captive audience," ripe for the "sales pitch" of the operator. Where the operator is unethical (or compelled in self-defense so to act), the accommodations at the price advertised are found by the would-be patron to be no longer available, having "just been rented" (if they were, in fact, ever available at the advertised price), but (invariably) "other accommodations," at a price or rate excessive of the reasonable value thereof, are always available.

Such are, generally, the actual facts, descriptive of the problem and presumed experience confronting the Legislature of the State of Nevada, in considering and enacting Chapter 415, 1959 Statutes of Nevada. Only as viewed against such actual facts and experience, can proper consideration be given to the regulatory provisions of said Act and their reasonableness as an exercise of the State's police power in relation to the protection of the public interest and welfare.

THE STATUTORY REMEDY

Experience had shown that prior, partial regulatory measures directed to the control and elimination of the evil of "bait-advertising" had proved insufficient and a failure. In such circumstances, can more restrictive, and even prohibitory, measures be considered arbitrary or unreasonable, and invalid as a matter of constitutional law?

The statute here challenged finds its justification in the police power, asserted in the public welfare. The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. "(A) regulation valid for one sort of business, or in given circumstances, may be invalid for another or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts." (Nebbia v. New York, 291 U.S. 502, 525, 78 L.Ed. 940, 950, 54 S.Ct. 505, 89 A.L.R. 956)

By outlawing outdoor price signs on the part of hotels and motels, the evils of "bait-advertising" have been effectively and uniformly curbed. The traveling public is no longer induced to stop and seek motel or hotel accommodations on the basis of a sign advertising their availability at a very modest price, only to find that all such advertised rooms are taken "and that the only available lodging is two or three times the price advertised." Manifestly, "the underlying purpose of the act is to break up this species of deception." (Adams v. Miami Beach Hotel Association, Fla., 77 So.2d 465; see also, City of Sarasota v. Sunad, Inc., Fla., 114 So.2d 377)

APPELLANTS' ARGUMENT

Essentially, Appellants' argument may be summarized as follows:

I. The definitions and prohibitions contained in the Nevada statute violate the XIVth Amendment to the Constitution of the United States in that they are unreasonable and arbitrary, and bear no reasonable relation to the end sought. (Pages 3, 5–9 of Appellants' Brief)

II. (a) The provisions of the Nevada statute, in the particular circumstances involved, are prohibitory, rather than restrictive and regulatory, and for that reason constitute an absolute denial of property rights in violation of Federal Constitutional guarantees. (Page 9 of Appellants' Brief)

(b) The Nevada Supreme Court committed error in not finding the legislative enactment unconstitutional on the basis of the evidence before it. (Page 9 of Appellants' Brief)

III. The Nevada Supreme Court committed error in concluding that certain cases, holding unconstitutional statutes limiting outside price advertising of gasoline to signs of

a certain size and prohibiting larger signs, were inapplicable and not controlling of the question here involved. (Pages 10–12 of Appellants' Brief)

APPELLEES' CONTENTIONS

The answer to Appellants' argument as stated in Point I above, is as follows:

A. THE NEVADA STATUTE CONSTITUTES A VALID EXERCISE OF THE STATE'S POLICE POWER AND IS NOT VIOLATIVE OF ANY FEDERAL GUARANTEE

(1) The circumstances prevailing at the time of enactment of the statute must be considered in determining whether the regulatory provisions therein contained are arbitrary, unreasonable, and unrelated to the object of the statute. (Patsone v. Pennsylvania, 232 U.S. 138, 34 S.Ct. 281, 58 L.Ed. 539)

(2) "The legislature, in the first instance, is the judge of what is necessary for the public welfare, and, in the absence of a showing of arbitrary interference with property rights or the lack of a substantial relation between means and a legitimate subject for regulation, we cannot declare this legislation invalid. * * * (I)t must be presumed that the Legislature has made a careful investigation in the field, and that it has properly determined that the interests of the public require this regulation." (Serve Yourself Gasoline Stations Ass'n v. Brock, 39 Cal.2d 813, 249 P.2d 545, 550, 345 U.S. 980, 97 L.Ed. 1394)

(3) "* * * legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it, and the existence of that state of facts at the time the law was enacted must be assumed. * * * It is the duty and function of the legislature to discern and correct evils, and by evils we do not

mean some definite injury but obstacles to a greater public welfare." (Rast v. Van Deman & Lewis Co., 240 U.S. 342, 357, 36 S.Ct. 370, 60 L.Ed. 679, 687) The existence of evidence in the record of facts which would justify enactment is not necessary; the existence of facts supporting the legislative judgment is presumed. (Clark v. Paul Gray, 306 U.S. 583, 594, 59 S.Ct. 744, 83 L.Ed. 1001, 1010; U.S. v. Carolene Product Co., 304 U.S. 144, 152, 58 S.Ct. 778, 82 L.Ed. 1234, 1241)

(4) The police power of the State is not limited to regulation or prohibition of acts which are *malum in se*, but if necessary to prevent the perpetration of fraud or to protect and promote the public interest and welfare, the legislature may regulate and even prohibit acts otherwise harmless in themselves. "We are equally clear that the Constitution imposes no such restraint on government as respects purely commercial advertising." (Valentine v. Chrestensen, 316 U.S. 52, 54, 62 S.Ct. 920, 86 L.Ed. 1262, 1265)

"The Constitution's protection of property rights does not make a state or a city impotent to guard its citizens against the annoyances of life because the regulation may restrict the manner of doing a legitimate business." (Breard v. Alexandria, 341 U.S. 622, 632, 95 L.Ed. 1233, 1242, 71 S.Ct. 920, 35 A.L.R.2d 335, at pages 344-345; see also Nebbia v. New York, 291 U.S. 502, 523, 78 L.Ed. 940, 948, 54 S.Ct. 505, 89 A.L.R. 1469)

(5) The power to regulate extends to and includes the power to prohibit; regulation, *pro tanto*, constitutes prohibition. (United States v. Carolene Products Co., supra) While the regulatory measures provided in the questioned statute are restrictive rather than prohibitory, it is submitted that even total prohibition would not be fatal to the constitutionality of the Nevada statute. "* * * the state may interfere whenever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests

of the public require, but what measures are necessary for the protection of such interests." (Lawton v. Steele, 152 U.S. 133, 136-137, 38 L.Ed. 385, 388; see also, Purity Extract & T. Co. v. Lynch, 226 U.S. 192, 201-202, 57 L.Ed. 184, 189; Euclid v. Ambler Realty Co., 272 U.S. 365, 387, 71 L.Ed. 303; Nebbia v. New York, supra; Hebe Co. v. Shaw, 248 U.S. 297, 303, 63 L.Ed. 255; Patsone v. Pennsylvania, supra; Semler v. Oregon State Bd. of Dental Examiners, 148 Ore. 50, 34 P.2d 311, aff'd 294 U.S. 608, 611-613, 55 S.Ct. 570, 79 L.Ed. 1086; Rast v. Van Deman & Lewis Co., supra; Booth v. Illinois, 184 U.S. 425, 429, 46 L.Ed. 623)

(6) The Constitution does not secure the liberty to conduct a business so as to injure the public at large or any substantial group. (Nebbia v. New York, supra; Euclid v. Ambler Realty Co., supra) Whether in addition to prohibiting false advertising or unfair trade practices it is necessary for the protection of the public to restrict (or even prohibit) the posting of outdoor price signs, considered to be the cause of experienced and serious, undesirable consequences, is a matter for the judgment of the legislature and not the courts. (Booth v. Illinois, supra; United States v. Carolene Products Co., supra)

(7) It is sufficient if deception has or could result from "bait-advertising." That Appellants may have acted in good faith and that the representations in their advertisements may have expressed the truth, must be considered beside the question. The question is: Does the kind of advertising prohibited afford the unscrupulous a means of perpetrating fraud and deception? In itself, there is nothing harmful in merely advertising prices, but who will doubt that motel and hotel operators often resort to "bait-advertisements" to lure tourists to their establishments on the pretense of having accommodations available at a certain price only to find that such accommodations are "no longer available." Once exposed to the operators' "sales pitch," the general result, as shown by actual experience, has been "gouging" or

the charging of excessive prices. (Adams v. Miami Beach Hotel Association, supra: Semler v. Oregon State Board of Dental Examiners, supra)

The Nevada statute does *not* prohibit all advertising, but bars only outdoor price signs as inimical to the public welfare.

(8) That some innocent and truthful operators might fall within the prescribed class does not justify any assumption that, as a matter of law, the end in view was not sufficient to justify the general restrictive provisions contained in the Nevada statute. The Legislature was concerned with a general problem and a practical evil.

"* * * when a State, exerting its recognized authority undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. It does not follow that because a transaction, separately considered, is inocuous, it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the government. Unless it clearly appears that the enactment has no substantial relation to a proper purpose, it cannot be said that the limit of legislative power has been transcended." (Purity Extract & T. Co. v. Lynch, 226 U.S. 192, 201–202, 57 L.Ed. 184, 189)

(9) Unconstitutionality must be clear, positive and unmistakably appear; a party challenging the validity of legislation has the burden of showing that it is palpably unconstitutional. That the legislation may not be considered the wisest or the most suitable means of attaining the objects of the statute is irrelevant in determining the constitutionality of the legislative enactment. (Clark v. Paul Gray, supra)

(10) The evil aimed at by the Nevada statute was notorious and general; the principal cause was legislatively determined to be

"bait-advertising"; the statutory remedy legislatively considered necessary to reach and eradicate the evil is direct, susceptible of indiscriminate and uniform application, and administratively feasible and effectual from the standpoint of law enforcement. The only effectual alternative remedy would be to station a policeman in each and every motel or hotel to check and control the veracity of the outdoor price signs used and the availability of accommodations at such advertised prices—manifestly, administratively impracticable and unfeasible.

(11) There is no denial of equal protection of the law. The Nevada statute includes within the classification all who are similarly involved. To be a general law, a statute does not have to be operative every place in the State. "It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named. (Patsone v. Pennsylvania, supra, citing Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 80, 81).

(12) The Nevada statute does not infringe upon the constitutional guarantee of free speech. (Valentine v. Chrestensen, supra; Breard v. Alexandria, supra; Hirsch v. City and County of San Francisco, 143 Cal.App.2d 313, 300 P.2d 177, 181–182, 183–184)

(13) The presumptive and actual need for the restrictive, regulatory provisions of the Nevada statute was a matter for legislative determination and decision, and the enactment cannot be said to be arbitrary, unreasonable, and not substantially related to the described public evil sought to be remedied.

(14) "Appellants have failed to overcome the presumption of the validity of the contested statute." Viale et al. v. Foley et al., No. 4235, Nevada Supreme Court, March 31, 1960. (Page 21 of Appellants' Brief)

The answers to Appellants' arguments, as stated in Point II (a) and (b) above, are sufficiently contained in the opinion of the Nevada Supreme Court (Pages 15–21 of Appellants' Brief):

B. (1) THE NEVADA STATUTE IS RESTRICTIVE AND REGULATORY: IT INVOLVES NO ABSOLUTE DENIAL OF PROPERTY RIGHTS: AND IT IS NOT VIOLATIVE OF ANY CONSTITUTIONAL GUARANTEE.

(2) THE EVIDENCE SUBMITTED BELOW BY APPELLANTS WAS NOT SUFFICIENT TO REBUT THE PRESUMPTION OF CONSTITUTIONAL VALIDITY OF THE NEVADA STATUTE.

(1) "It is to be noted that the restrictive legislation found in said subsection 2 pertains to advertising only; that the advertising which is regulated relates only to room rates; and that the advertising of room rates is prohibited only with respect to outdoor or outdoo. signs. Under these circumstances, it cannot be said that there is a prohibition against all forms of advertising nor is there a total prohibition of advertising of room rates. The statute does not prohibit all outdoor signs or all advertising. Outdoor advertising of the type of accommodations, services, and accessories afforded is not restricted. Advertising of rates by newspapers, television, radio broadcasting, handbills, etc., is not prohibited. In other words, the statute must be construed as restrictive and regulatory of the manner and means of advertising rates rather than an absolute prohibition against any kind of advertising and thus involves no absolute denial of a property right without due process of law." (Page 18 of Appellants' Brief)

(2) "While it is proper for the trial court to permit the introduction of evidence as an aid in its determination of the

validity of a statute resulting from the need to promote the general welfare, (cases) the existence of evidence in the record of facts which would justify the enactment is not necessary; the existence of facts supporting the legislative judgment is presumed." (Cases). (Page 20 of Appellants' Brief)

* * *

"In addition to the presumption of the need of this statute for the promotion of the public welfare, such need for this type of regulation is further evidenced by the fact that the 1960 session of the Nevada Legislature has enlarged the application of NRS 651.040 to apply to counties having a population of 10,000 or more persons when theretofore it applied only to counties of 25,000 or more persons." (Page 21 of Appellants' Brief)

* * *

"Appellants have failed to overcome the presumption of the validity of the contested statute." (Page 21 of Appellants' Brief)

The answer to Appellants' argument as stated in Point III, above, is as follows:

C. THE WEIGHT OF AUTHORITY RELATIVE TO RESTRICTIVE REGULATIONS OF GASOLINE PRICE ADVERTISEMENTS ARE NOT APPLICABLE NOR CONTROLLING OF THE QUESTION HEREIN.

The Nevada Supreme Court, specifically and expressly, so found. (Pages 19-20 of Appellants' Brief) There are many relevant, important, and definite factual differences and distinctions in the two situations to justify and support such conclusion.

Opportunity for fraud and deception, based upon small or large price signs advertising the sale of gasoline, is difficult if not

impossible. There is legitimate basis for differences of opinion and judgment concerning the need for and the substantiality of the relation between the restrictive regulation of the number and size of gasoline price signs to the perpetration of fraud and deceit.

The commodity, gasoline, is fixed; the quantity purchased and delivered, *mechanically regulated, controlled, and dispensed;* the price paid, inclusive of any sales tax (whether set forth in a small or large sign), advertised and brought to the attention of a prospective purchaser; and a gasoline service station would, presumptively, find it difficult to charge a price for gasoline so sold, different from that which was advertised. Generally, therefore, a proper and sufficient basis for valid exercise of a State's police power for protection of the public interest and welfare is lacking in such circumstances. However, we are not prepared to concede that intervention and regulation by a State, *under any and all possible* circumstances, is and would be, *absolutely precluded under existing constitutional guarantees.*

It is submitted that the actual factual situation is quite otherwise in "bait-advertising," or outdoor price signs, on the part of motels and hotels. The commodity is not fixed but various and differently-priced accommodations; the number of rooms rented and available for rent at a specified and advertised price at any given time is also not fixed but uncertain; use of "bait-advertisements" to lure, mislead, and "gouge" prospective tourist patrons has been actually experienced to the substantial detriment of the public interest and welfare; and, finally, the described abuses and evils cannot otherwise be effectually prevented and eradicated.

In short, the fixed conditions and controls, mechanical and otherwise, preventing manipulation, deception or fraud, and "gouging" in connection with the purchase and sale of gasoline, are not present in "bait-advertisements" and rental of motel or hotel accommodations.

CONCLUSION

We submit that there has been no taking of property without due process of law, or denial of any other fundamental right guaranteed by either the Constitution of the United States, or the Constitution of the State of Nevada.

Respectfully submitted,

ROGER D. FOLEY
Attorney General

JOHN A. PORTER
Deputy Attorney General

NORMAN H. SAMUELSON
Deputy Attorney General
Counsel for Defendants-Appellees

Supreme Court Building
Carson City, Nevada